



APR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.532 of 1990

Ramkumar

Versus

State of Chhattisgarh

JUDGMENT

Post for : 11.06.2007

Sd/-
Sunil Kumar Sinha
Judge

Noted
A.S.A.
22/6/07

BPR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.532 of 1990

APPELLANT

Ramkumar s/o Bhuwanlal
Dewangan, aged about 20 years
R/o Tikrapara, Raipur(CG)

Versus

RESPONDENT

State of Chhattisgarh
Through P.S. Amanaka, Raipur
(C.G.)

Appearance:

Shri Shyam Tekchandani, counsel for the appellant.

Shri Arun Sao, Government Advocate for the State.

JUDGMENT
(11.06.2007)

SUNIL KUMAR SINHA, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 2.3.1990, passed in Sessions Trial No.119/1987 by the Second Additional Sessions Judge, Raipur, whereby, the appellant has been convicted under Section 376 IPC and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.1000/-, in default of payment of fine to further undergo R.I. for 6 months. However, he was acquitted under Section 394 IPC.

2. This appellant was charged with Sections 394 and 376 IPC. The case of the prosecution is that at about 9.00 am on 17.12.1986, the prosecutrix namely-Geeta Bai, a deserted lady aged about 24 years, met the appellant at Phoolchowk, Raipur.

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She was in search of some labour work. On the pretext that the appellant would manage for work, she accompanied the appellant and went to village-Bhatagaon, which is at some distance from Raipur. The further case of the prosecution is that in the vicinity of village Bhatagaon, the appellant took the prosecutrix to an agricultural field and thereafter, at the point of knife, he committed forcible intercourse against her. It is also the case of the prosecution that after commission of the sexual intercourse for one time, they remained there for about half an hour and again the appellant committed sexual intercourse for the second time and thereafter, he snatched some silver ornaments from the prosecutrix and he also caused injuries to her. The prosecutrix alleges that at the time of commission of sexual intercourses, the appellant had put a rope around her neck and thereafter, forcible sexual intercourses were committed by him. The prosecutrix lodged a first information report (Ex.P/1) at 4.45 p.m., on the same day in Chowki Tikrapara, P.S. Purani Basti, Raipur. During the course of investigation, she was sent for medical examination, and for her injuries, she was examined by Dr. Rajendra Kumar (PW-5), who prepared his report Ex.P/8-A. According to his report, there was swelling on the eyes of the prosecutrix and there was abrasion on the front side of the neck. He opined that both the injuries were caused by hard and blunt object and injury No.2 was simple in nature and for injury No.1, he referred the prosecutrix to an Eye Surgeon, who after examination gave his report Ex.-P/5. It

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appears that thereafter, the prosecutrix was also examined by the Gynecologist namely- S.Ranganna, R.M.O. Maternity Section, D.K.Hospital, Raipur, who found no mark of injury over the private parts of the prosecutrix. There was no matting of pubic hairs and no semen like stains etc. were found. No vaginal discharge was seen and no Gynecological problem was noticed. The appellant was arrested and was examined by Dr. P.L. Yadu (P.W-4), who gave his report Ex.P/9-A. According to this report, no external injuries were found on the body of the appellant and among other usual characteristic, the appellant was found capable to perform sexual intercourse. After completion of usual investigation, charge sheet was filed.

3. The learned Sessions Judge acquitted the appellant under Section 394 IPC. He recorded the finding vide Para 14 to 16 of the impugned judgment that since no property was seized from the possession of the appellant and even the appellant was not asked about such property by the Investigating Officer, whereas, he was arrested within 2 days of the said report, therefore, the said offence was not made out against him. However, he recorded the finding of conviction under Section 376 IPC, solely on the basis of evidence of the prosecutrix. He believed the story set forth by the prosecutrix so far as it relates to commission of forceful sexual intercourse against her.

4. Learned counsel for the appellant argued that the conviction based upon the sole testimony of the prosecutrix, is

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not in accordance with law and the same deserves to be set aside.

5. On the other hand, learned counsel for the State opposed these arguments. He supported the judgment of conviction and order of sentence passed by the Sessions Court.

6. I have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

7. Admittedly, the prosecutrix- Geeta Bai (P.W.-1) was aged about 23-24 years on the date of incident and the appellant was previously known to her. She deposed that the appellant took her with him towards Bhatapara and she was taken to an open field, where she was subjected to forceful sexual intercourse. She deposed, at that time, the appellant had put a rope around her neck and he had also tied her eyes by a *tepa* (a piece of small clothes). She also indicated that in which manner he committed sexual intercourse. She deposed that in performing sexual intercourse, they consumed half an hour. The appellant got her laid down on the field and after removing her *saree* & *petticoat*, he committed sexual intercourse. She further deposed that after the first intercourse, after one hour, the appellant again committed sexual intercourse with her for the second time and that also consumed half an hour. She further deposed vide para-2 that after all this, the appellant took her silver ornaments, which she was wearing, and fled away from the place of occurrence. In the cross-examination, vide para-10, she admitted that after commission of sexual intercourse for the first

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time, both of them silently sat in the field for half an hour and thereafter, the second intercourse had taken place. Her such admission in the cross-examination is as follows:

“पहले बार बुराकाम करने के आधा घण्टे बाद
दूसरे बार बुराकाम किया । आधा घण्टा तक हम लोग
दोनों उस खेत में चुपचाप खेत में बैठे रहे । बात नहीं
किये । घटना सुबह की नहीं बल्कि दोपहर की है ।
जो कि एक डेढ़ बजे की बात है ।”

8. In view of this evidence and further in view of the medical report of the prosecutrix, it is clear that she voluntarily accompanied the appellant from Raipur to Bhatagaon, both went there on foot and in the vicinity of village Bhatagaon (mentioned as Bhatagaon in the F.I.R. but deposed as Bhatapara in the deposition) they went towards a field, where the appellant got the prosecutrix laid down on the field and after removing her *saree & petticoat* committed sexual intercourse with her. On the admission of the prosecutrix, after performing the first intercourse, they silently sat on the field for half an hour and thereafter the second intercourse was performed. The prosecutrix is not saying that either the appellant had forcibly taken her or he had forcibly restrained her after the commission of first intercourse and then only, the second intercourse was committed. She only makes allegation that at the time of commission of sexual intercourse a rope was put around her neck and in the first intercourse, her eyes were tied by *tepa* (clothes). The version of the prosecutrix, so far as it relates to

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putting of rope and tying clothes over the eyes does not appear to be true. Much weightage cannot be given to such evidence of the prosecutrix, particularly in the circumstance, when her story pertaining to snatching of the ornaments by force has been disbelieved by the Sessions Court and to that extent, she was held to be unreliable.

9. Learned counsel for the appellant argued that despite sufficient opportunity, the prosecutrix neither ran away from the scene of occurrence nor she took help of any other person, there were no injuries on her back or thigh including her private part and the injuries sustained were explained by herself saying that these were injuries of assault and further that she sat silently with the appellant in the field for half an hour and thereafter the sexual intercourse was performed for the second time, therefore, her entire conduct shows that she was a consenting party.

10. There is force in arguments advanced by the learned counsel for the appellant and on the conduct of the prosecutrix, a possibility of her being a consenting party cannot be fully ruled out in this case.

11. The testimony of the prosecutrix regarding commission of forceful sexual intercourse against her does not inspire the confidence of the Court so as to rest a conviction on her such testimony, particularly in the circumstance when her story set forth regarding snatching of the ornaments was completely disbelieved by the Sessions Court and the appellant was

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acquitted u/s 394 I.P.C. meaning thereby she was not treated to be a reliable witness for that part of allegations made by her. Therefore, a possibility of her being a consenting party can not be fully ruled out in this case.

12. In the facts and circumstances, the conviction and sentence awarded to the appellant, deserves to be set aside and is accordingly set aside. He is acquitted of the charges framed u/s 376 I.P.C. It is reported that the appellant is in jail. He be set at liberty forthwith, if not required in any other case.

13. The appeal stands allowed.

Sd/-
Sunil Kumar Sinha
Judge